

1  
2  
3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 MICHAEL MCDONALD,

Case No. 2:19-cv-01808-RFB-NJK

6 Petitioner,

7 v.

**ORDER**

8 SHERIFF JOE LOMBARDO, et al.,

9 Respondents.

10 Petitioner Michael McDonald initiated this case by filing a pro se Petition for Writ of  
11 Habeas Corpus, ECF No. 1-1, and paying the five dollar filing fee. This matter is before the Court  
12 for initial review pursuant to the Rules Governing Section 2254 Cases.<sup>1</sup> For the reasons discussed  
13 below, the Court dismisses the petition as improperly commenced.

14 Pursuant to Habeas Rule 4, the assigned judge must examine the habeas petition and order  
15 a response unless it “plainly appears” that the petitioner is not entitled to relief. See also Valdez  
16 v. Montgomery, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss  
17 petitions that are patently frivolous, vague, conclusory, palpably incredible, or false. Hendricks v.  
18 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases). The court may also dismiss claims  
19 at screening for procedural defects. See Boyd v. Thompson, 147 F.3d 1124, 1128 (9th Cir. 1998).

20 McDonald is charged in an information filed on August 7, 2018, in the Eighth Judicial  
21 District Court for Clark County, Nevada (“state court”). State of Nevada v. Michael Lee  
22 McDonald, Case No. C-18-333681-1.<sup>2</sup> The information alleges five felony charges for unlawful  
23 interception of wire communications, and trial is currently set for this month, October 2019.

24  
25 <sup>1</sup> All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules Governing Section  
2254 Cases in the United States District Courts.

26 <sup>2</sup> This Court takes judicial notice of the proceedings in McDonald’s criminal case in the state court. The  
27 register of actions indicates that trial is set for October 23, 2019. The state court’s docket records may be  
28 accessed by the public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx>.

1 McDonald's petition attempts to bring a pretrial challenge to his pending information  
2 pursuant to 28 U.S.C. § 2241. ECF No. 1-1 at 3. He alleges four grounds for violation of his rights  
3 to due process, speedy trial, compulsory process for obtaining witnesses in his defense, effective  
4 assistance of counsel under the Fifth, Sixth, and Fourteenth Amendments, as well as rights to be  
5 free of cruel and unusual punishment under the Eighth Amendment. Id. at 7–9. However,  
6 McDonald represents that he has not filed any appeal or grievance, or sought any administrative  
7 remedy. Id. at 3–6. The request for relief seeks McDonald's release from Clark County Detention  
8 Center ("CCDC"),<sup>3</sup> for his charges to be dismissed in Case No. C-18-333681-1 and other cases,  
9 and monetary compensation. Id. at 9.

10 Here, the petition is subject to two substantial defects. First, the petition improperly seeks  
11 federal judicial intervention in a pending state criminal proceeding. The Younger abstention  
12 doctrine prevents federal courts from enjoining pending state court criminal proceedings, even if  
13 there is an allegation of a constitutional violation, unless there is an extraordinary circumstance  
14 that creates a threat of irreparable injury. Younger v. Harris, 401 U.S. 37, 53–54 (1971). The  
15 United States Supreme Court has instructed that "federal-court abstention is *required*" when there  
16 is "a parallel, pending state criminal proceeding." Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69,  
17 72 (2013) (emphasis added); Gilbertson v. Albright, 381 F.3d 965 (9th Cir. 2004) (federal courts  
18 generally abstain from granting any relief that would interfere with pending state judicial  
19 proceedings). Irreparable injury does not exist if the threat to a petitioner's federally protected  
20 rights may be eliminated through his or her defense of the criminal case. Younger, 401 U.S. at 46.

21 Second, McDonald has not alleged or demonstrated that he fully exhausted his state court  
22 remedies. A criminal defendant seeking federal habeas relief to restrain ongoing state criminal  
23 proceedings must fully exhaust his state court remedies before presenting his constitutional claims  
24

---

25 <sup>3</sup> The Court also takes judicial notice of the online records from CCDC, which confirm whether a criminal  
26 defendant is in state custody. A search of current detainees indicates that McDonald is not in custody at  
27 CCDC. The "in custody" search may be accessed by the public online at:  
<http://www.clarkcountynv.gov/ccdc/Pages/InCustodySearch.aspx?H=redrock&P=ccdcincustody/inCustodySearch.aspx>.

1 to the federal courts. E.g., Arevalo v. Hennessy, 882 F.3d 763, 764–67 (9th Cir. 2018) (finding  
2 that California petitioner properly exhausted his state remedies by filing two motions in the trial  
3 court, a habeas petition in the court of appeal, and a habeas petition in the state supreme court,  
4 each of which was denied). The exhaustion requirement ensures that state courts, as a matter of  
5 federal-state comity, will have the first opportunity to review and correct alleged violations of  
6 federal constitutional guarantees. Coleman v. Thompson, 501 U.S. 722, 731 (1991). As a general  
7 rule, a federal court will not entertain a petition seeking intervention in an ongoing state criminal  
8 proceeding absent extraordinary circumstances, even when a petitioner’s claims were otherwise  
9 fully exhausted in the state courts. E.g., Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983);  
10 Carden v. Montana, 626 F.2d 82, 83–85 (9th Cir. 1980).

11 No extraordinary circumstances are presented here. McDonald seeks to challenge the  
12 charges alleged against him in the information pending before the state court. ECF No. 1-1. To  
13 the extent that he alleges limitations on his due process or equal protection rights based on an  
14 erroneous indictment, his situation is not different in substance from any criminal defendant facing  
15 potential loss of constitutional rights in a pending criminal prosecution—including the most  
16 fundamental right to liberty. Defendants in state criminal proceedings routinely allege that state  
17 charges violate their constitutional rights, including fundamental rights, which makes this a regular  
18 occurrence, not an extraordinary circumstance. In addition, McDonald’s pretrial motion practice  
19 or defenses at trial may eliminate any threat to his federally protected rights. For these reasons,  
20 abstention is required.

21 Given the two substantial defects presented, this matter will be dismissed without  
22 prejudice. Dismissal of this action without prejudice will not materially impact the analysis of any  
23 issue in a later filed habeas proceeding, or otherwise result in substantial prejudice.

24 **IT IS THEREFORE ORDERED:**

- 25 1. Petitioner Michael McDonald’s Petition for Writ of Habeas Corpus pursuant to 28  
26 U.S.C. § 2241, ECF No. 1-1, is DISMISSED without prejudice as improperly  
27 commenced.  
28

- 1 2. A certificate of appealability is DENIED, as jurists of reason would not find dismissal  
2 of the petition to be debatable or wrong.
- 3 3. The Clerk of Court shall CLOSE this case and ENTER judgment accordingly,  
4 dismissing this action without prejudice as improperly commenced.
- 5 4. McDonald may not file any further documents in this closed case, save and except for  
6 a motion seeking reconsideration of this order or relief from the judgment entered. Any  
7 further filings or requests for relief must be presented in a new case with a new case  
8 number.

9 DATED this 21st day of October, 2019.

10  
11 

12 **RICHARD F. BOULWARE, II**  
13 **UNITED STATES DISTRICT JUDGE**  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28